

resources of a licensed hospital, rather than those of some other appropriately licensed facility, were necessary to meet the legitimate health interests of the State. Relying on Roe, the Court held that "the hospital requirement of the Georgia law, because it fails to exclude the first trimester of pregnancy...is also invalid". Doe v. Bolton, 410 U.S. at 195. We, therefore, advise that that portion of Article 43, Section 137 that requires hospitalization for abortion has been found unconstitutional.

Article 43, Section 137(k) places further limitations on termination of pregnancy in the State of Maryland. The conditions are set out in subsections (1) it must be less than twenty-six weeks of gestation, unless continuation of the pregnancy will likely result in the death of the mother or the fetus is dead, and (2) there must be authorization by a hospital abortion review authority. The Supreme Court in Roe, supra., determined that the State's important and legitimate interest in potential life is at the compelling point of viability, when the fetus presumably has the capability of meaningful life outside the mother's womb.

"State regulation protective of fetal life after viability thus has both logical and biological justifications. If the State is interested in protecting fetal life after viability, it may go so far as to proscribe abortion during that period, except when it is necessary to preserve the life or health of the mother." Roe v. Wade, 410 U.S., at 163, 164 (emphasis supplied)

Roe, supra., stands for the proposition that there may be an important and legitimate State interest in protecting the life of the fetus when the fetus has become viable, capable of living outside the mother's womb. This interest is such that the State may proscribe abortions during the third trimester except where it is necessary, in appropriate medical judgment, to protect the life or health of the mother.

The prohibition, and the exceptions applicable only when the fetus is dead or continuation of the pregnancy is likely to result in the mother's death, against termination of pregnancy after the twenty-sixth week of gestation in Article 43, Section 137(k) does not allow an exception in situations where continuation of the pregnancy would endanger the health of the mother. We therefore advise that Article 43, Section 137(k) has for all intents and purposes been found to be unconstitutional to the extent that it prohibits abortions after twenty-six weeks gestation, except where the life of the mother is endangered or the fetus is